2410.

SUPREME COURT OF THE UNITED STATES.

No. 78.

THE WESTERN TELEGRAPH COMPANY, APPELLANT,

vs.

GEORGE C. PENNIMAN AND JOHN KING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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2411

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-seven—

Present, the honorable W. F. Giles, judge of Maryland district; William M. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk—

Among other were the following proceedings, to wit:

THE WESTERN TELEGRAPH COMPANY
vs.
GEORGE C. PENNIMAN and JOHN KING.

Be it remembered that on the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the Western Telegraph Company, by Cornelius McLean and George H. Williams, its solicitors, filed in the circuit court here its bill of complaint against the said George C. Penniman and John King, in the words and of the tenor following, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the United States for the district of Maryland:

The Western Telegraph Company, a corporation incorporated by the States of Maryland, Virginia, and Pennsylvania, bring this their bill of complaint against George C. Penniman and John King, citizens of Maryland. And thereupon your orators complain that heretofore one Samuel F. B. Morse became entitled, under letters-patent from the United States to the exclusive use and ownership of the American electro-magnetic telegraph, a new and useful invention, which immediately went into general use in the United States, and has been generally known as and called Morse's Telegraph.

And your orators further show, that on the said letters-patent having been contested, their validity and the right of the said Morse and his assignees thereto were finally established by the Supreme Court of the United States in the case of O'Reiley and others against the said Morse and others, reported in the fifteenth volume of Howard's Supreme Court Reports, except as to claim No. 8 of the first of the reissues of the thirteenth of June, in the year eighteen hundred and forty-eight; as to which, it was determined in the same case that the said Morse might disclaim under

the laws for that purpose, which he accordingly did during the continuance of his first patent, and before the renewal thereof which he has since obtained, and under which renewal and subject to which disclaimer your orators now claim in this case.

And your orators further show that the mode by which the said letters patent and the said invention were brought into general use, was by the establishment of telegraphic lines of communication from important and business points in one section of the country, to similar points in another section, which was frequently accomplished by means of sales of exclusive rights between those points to persons or incorporated companies, one purchasing from one point to another, not so far distant as to require a very large capital to erect the necessary fixtures, and another purchasing the like exclusive right from one of the said points to some other, so as to make a continuous line to telegraph by means of the co-operation of the said persons or companies. In this manner telegraphic lines under the said patent have been extended from one end of the Union to the other.

And your orators further show that in pursuance of the said policy, the said Morse and others, to whom he has assigned a joint interest in his said invention, by their assignment duly recorded in the Patent Office, did, on or about the seventh day of March, in the year one thousand eight hundred and forty-eight, grant and convey to the said George C. Penniman the exclusive right of using the said patent between the cities of Harrisburgh, in Pennsylvania, and Baltimore, in the State of Maryland; under the said grant the said Penniman proceeded to erect a telegraph line between the two cities, and entered into the business of carrying telegraphic messages accordingly. By the terms of the said grant, the said Penniman was obviously confined to the said points as designated in the same, and was not authorized, either by himself or in conjunction with any other person or companies, to bring messages from the West to Baltimore or Washington, or from those cities to the West; such right being still in the hands and ownership of the said patentee and his assignees, unless disposed of to some other person, which your orators aver it never was.

And your orators further show, that the said Morse and his assignees, being still owners of the said patent, so far as the right to use the same on telegraphic wires between Wheeling and Pittsburgh, and Washington and Baltimore, did, by their assignment, which was duly recorded in the Patent Office, and dated on the thirteenth day of April, eighteen hundred and forty-nine, grant and convey to your orators the exclusive right to use the said invention between the city of Baltimore and Wheeling, with the right to erect branches to Washington city and Pittsburgh; and that immediately afterwards, your orators proceeded to erect telegraphic lines between the said cities, and commenced the business of carrying telegraphic messages under the said patent right, having ex-

pended in the preparation therefor, and in the purchase of the said right, upwards of one hundred thousand dollars. One of the assignees of the said Morse did not convey his interest at the time above specified, but did so subsequently, and his assignment was lost without having been recorded. He has since, however, on or about the twenty-seventh day of March last, conveyed his interest to your orators by an assignment, which has been duly recorded.

And your orators further show, that the exclusive right to use the said invention between the cities of Washington and Baltimore in the East, and Wheeling and Pittsburg in the West, would hardly have justified so large an outlay of capital as your orators were obliged to use in bringing the said invention into use between those points, if their telegraphic despatches were to be limited to them, between which there was at that time a very small business.

Your orators looked, therefore, not only to the business existing between those cities and the telegraphic messages starting from those points, but also to like messages which would be required between Baltimore and Washington and cities west of the above-named western points, and hoped and expected, and were so led to believe from the usual course of business and the nature of the monopoly which they had secured, that they would carry from Washington and Baltimore to Wheeling and Pittsburgh all western messages directed beyond and westward of those points, and so bring to Baltimore and Washington all western messages from beyond those points and directed to the said cities of Washington and Baltimore, or south of the same; and that in such manner they would have the carriage of all telegraphic messages to the said cities from the West, and to the West from the said cities, and by a continuous line to the South, along the valley of the Mississippi, as far as New Orleans. And your orators have been advised that their rights extend so far, and that no telegraphic message can be rightfully sent through Wheeling or Pittsburgh to the said cities of Washington and Baltimore, or south of the same, or from the said last-named cities to points farther west than the first named, by any other telegraphic line than your orators', so far as your orators' said line extends, without a clear and palpable evasion of your orators' exclusive right as granted to them as aforesaid.

And your orators have been further advised, and so insist, that any acts or doings of the said Morse or of any of his assignees, by which any such messages passing through Wheeling or Pittsburgh on their way to Washington or Baltimore, or from those cities to western points beyond Wheeling and Pittsburgh, and passing through either of them, have been diverted from your orators' said line, and carried on other telegraphic lines, are infringements of your orators' exclusive rights as granted to them, and of great and permanent injury to your orators.

And your orators have been informed and so believe, and therefore

aver and show, that under various assignments of exclusive rights to use the said invention from the said Morse and his assignees, sundry lines of telegraph have been established from Pittsburgh and Wheeling to Louisville, Cincinnati, St. Louis, and other western cities, and also one or more lines connecting with those lines, and extending down the valley of the Mississippi to New Orleans, as well as one or more lines from Pittsburgh and Wheeling as far as Harrisburg on their way to Philadelphia, and from Harrisburg to the said city. By means of the said western telegraphic lines your orators' hopes and expectations might have been completely realized if they had been allowed to enjoy their rights in carrying all telegraphic messages between the points included within grant; though your orators never claimed, and do not now claim, the carriage of any such messages directed to and bona fide intended for Harrisburg, either from the west or from Washington or Baltimore.

And your orators further show, that so long as the said companies and persons owning the said lines, and especially that from Harrisburg to Baltimore, were confined to the business of transmitting telegraphic messages to and from points for which they had the exclusive right, and on reaching the extreme point, of their right to handing over the said business to the line or company or party having the exclusive right beyond for the particular point to which the same messages were directed, your orators had no right to complain; but your orators further show, that the said persons and companies have in some way conspired together, or contracted with each other to transmit telegraphic messages from the West to Baltimore and Washington, by the circuitous route of Harrisburg, and thence to those cities, by which your said orators' patent rights have been evaded.

And your orators further show, that the said George C. Penniman and the said John King, who are residents and citizens of the State of Maryland, have lately entered into some kind of contract for bringing the said telegraphic messages from Pittsburgh and Wheeling to Washington and Baltimore by their line from Harrisburg, although they well knew your orators' said rights and the true meaning and intent of their own and your orators' said patents, and also well know that the said messages are sent by that circuitous route to evade your orators' said rights; that the said messages are or have been directed from points west of Wheeling and Pittsburgh, have passed through those places, and have been put on their said wires for transmission to the said cities of Baltimore and Washington, and not directed to or designed for Harrisburg, but directed to the said cities. And the said defendants have in like manner received at Baltimore messages dated at that place or at Washington and directed to Wheeling or Pittsburg, or to points west thereof, and carried the same on the said line from Baltimore to Harrisburg, and at the last-mentioned place handed the same

over to some persons or companies, owners of said Morse's patent, to be transmitted to Wheeling or Pittsburgh, or to places west of the said cities and through the same, on telegraphic lines erected under assignments from the said Morse. And your orators have been informed and so believe that the said Penniman and the said John King, or one of them, or the said John King as agent for the said Penniman, or for some other persons or company not in the State of Maryland, and who therefore cannot be made parties to this bill, have, for the purpose of doing the said western telegraph business, reduced the usual rate of charges, was to compete with your orators, which they have done in connection with the other lines at the west, extending from Harrisburg to Wheeling and Pittsburgh, and to points farther west.

And your orators further show unto your honors that the said Penniman and others, owners of the said line from Harrisburgh to Baltimore, have always been ready to and have received at Harrisburgh, and brought to Washington and Baltimore, the said western messages; but that until lately your orators have been principally suffered from the interference of the Magnetic Telegraph Company, a corporation incorporated by the State of Maryland, who are the owners of the exclusive right to the said invention from Washington to Baltimore, Philadelphia, and New York, which company was in the general habit of receiving western messages at Philadelphia, and so injured and prostrated your orators thereby as to force them to abandon their branch at Pittsburgh, and otherwise reduced them to great difficulties and straits. But your orators believe that it has only been within the last two or three months that the said Penniman and John King have regularly entered into the business of carrying and receiving the said messages, by means of a combination or contract for that purpose, to which they were probably led by seeing the effect of the interference of the said Magnetic Telegraph Company with your orators, and the impunity with which it was done. But so it is, that by means of the said line and through the agency and co-operation and with the deliberate assistance of the said Penniman and King, if they are not partners to the agreement or arrangement between the owners of the said other western telegraph lines, using the patent rights of the said Morse, the said western lines have been able to cut off from your orators all the western business which ought to have come to your orators at Wheeling and Pittsburgh for transmission to Baltimore and Washington, and have thus forced your orators to rely on the local business of these routes alone for the payment of the expenses of supporting it.

And your orators further show that the said Penniman, from the time of your orators' establishing their lines, carried to and from Harrisburg and Baltimore all the messages from and to the West between the points covered by your orators' grant which he could procure, and thus aided and assisted the said Magnetic Telegraph

Company in their design to break up your orators' business, and thereby contributed to make your orators' property insecure, and finally to oblige your orators to abandon the Pittsburgh branch. But your orators also show that on or about the month of January last, they were informed by the owners of the said telegraph lines west of Wheeling and Pittsburgh that they would send no more messages coming from the West and directed to Washington and Baltimore by your orators' line. Immediately afterwards all the said messages, as well as messages from Baltimore and Washington to the West, were transmitted to Philadelphia, and thence by the Magnetic Telegraph Company to Washington and Baltimore, and by other lines from Philadelphia to the West. But some weeks afterwards, although the said company continued to do some of the same kind of business, the bulk of the western business was brought by the said Penniman and King from and carried to the West by way of Pittsburgh and Wheeling over the said telegraphic line from Baltimore to Harrisburgh, and thus your orators have by the action and contrivance of the said Penniman and King been deprived of nearly the whole of their revenue and their property, and their said patent right made valueless in their hands.

And your orators further show, that so perfect has been the combination between the said Penniman and John King, and the said other telegraph lines, that although your orators still send telegraphic messages both from Baltimore and Washington to Wheeling and Pittsburg, and cities west of the same, yet answers are always brought from all points west of the last-named cities by the said Penniman and King from Harrisburg to Baltimore, and then sent to Washington; by means whereof persons become indisposed to employ your orators' line, and are induced to send western messages by the way of Harrisburg. Your orators do not know, and therefore cannot say, what amount of money the said defendants have received, but they aver that the whole of the western business, if done by your orators according to their rights, as set forth herein, would, without difficulty, give to them six per centum on their capital of one hundred thousand dollars, over their local business, out of which their expenses have been paid; and they are advised that in the absence of information as to the sums actually received by the said Penniman and King, that sum would be a good measure of their profits. And they are also advised and so insist, that they are responsible to your orators not only for their actual profits, but also for all moneys they may have received from said messages, without being entitled to any credit for what they may have paid to other lines.

And your orators further show that they know not in what relation to each other the said Penniman and the said King stand. They have been informed, but as to the truth thereof they cannot say, that the said King has leased the said line from Harrisburg to Baltimore from the said Penniman, and at other times that he

has leased the same in connection with other persons unknown to your orators, and at other times that he is only an operator on the said line, acting for other persons unknown to your orators. Your orators, however, are advised that he is responsible to your orators in either capacity, and that while in the possession of the said telegraphic line, as your orators aver he has been for at least the last two months, he is responsible to your orators for the action of the said line so far as it interferes with your orators' rights, though your orators believe and so aver that the said Penniman and King are in some way concerned together in the management of the same, and became so concerned with the view and under the expectation of taking away and themselves doing your orators' proper business by the means hereinbefore described.

All which actings and doings are against equity and good conscience, and manifestly to the wrong and injury of your orators; and they herewith file, as part of this bill of complaint, which they pray may be made and taken as such, copies of the assignments to your orators and the said Penniman, marked exhibits Nos. 1, 2, and 3.

And forasmuch as your orators are remediless in the premises according to the strict rules of the common law, and can only obtain redress in this honorable court where this and matters of a like nature are properly cognizable, may it please your honors to decree that the said defendants or some of them pay unto your orators the sums of money which they have received for the telegraphic messages which they carried or sent as aforesaid, in violation of your orators' said rights; and that the said defendants may be enjoined, and the said United States' most gracious writ of injunction be issued to the said defendants, restraining and enjoining them, their servants, agents, operators, and all other, their officers and employees from taking, receiving, or transmitting, either at Baltimore or Harrisburgh, and carrying to Baltimore or Washington any telegraphic message coming from Pittsburgh or Wheeling, and brought by any of the said telegraphic lines, or any agent thereof to the defendants at Harrisburgh, or any telegraphic messages brought by any of the said telegraphic lines, or any agent thereof, to the said defendants at Harrisburgh from any points west of Pittsburgh or Wheeling, through the said two last-named cities, or either of them, and also from taking, receiving, or transmitting, from the city of Baltimore to Harrisburgh any telegraphic messages dated at Baltimore, Washington, or any more southern point, directed to the said cities of Wheeling or Pittsburg, or to any point west of the same, to be sent through those cities, or either of them; and also to decree to your orators such other and further relief as may seem reasonable and just in the premises.

To the end, therefore, that the said George C. Penniman and John King may show cause why your orators should not have the relief hereby prayed, and answer on their several and respective

corporal oaths, according to their several and respective knowledge, remembrance, information, and belief, in a full, true, perfect, and direct manner to such of the interrogatories hereafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Were not the said letters-patent granted to the said Morse, as herein stated? and has not the said telegraph called Morse's telegraph been ever since in use in the United States under the said patent as his?

2. Have not the said patent rights been established and confirmed by the Supreme Court of the United States, as stated herein?

3. Has not the said Penniman, by himself or by others, his agents or assignees, used the said patent right under the said assignment to him from the said Morse and others since the execution of the same? and does not he, either alone or in conjunction with the said John King, or the said King alone, or with others, now use the same under the said assignment?

4. Have not the complainants used the said patent according to the assignment to them in the conveyance of telegraphic messages between Baltimore and Washington, and Wheeling and Pittsburgh? and did not the said Penniman know of the said assignment at the time of its execution, or shortly afterwards?

5. Has not the said Penniman, from the time of the assignment to your orators, taken at Harrisburg telegraphic messages from Wheeling and Pittsburgh and points west thereof, which he knew came through the said western cities, or one of them, directed to Washington or Baltimore, and transmitted the same to the said places? and has not the said King done the same, well knowing that the said messages were brought to Harrisburg from, through, and beyond the said western cities by telegraphic lines under the said Morse's patent? and if so, what moneys have they or either of them received for said messages up to the present time in each year, and when did they or either of them begin to take and transmit the same?

6. Has not the said Penniman taken and transmitted, from the time of the assignment to your orators, messages from Baltimore to Harrisburgh directed to Wheeling and Pittsburgh, and points west thereof, and which he knew were to be transmitted through the said cities by some telegraphic line acting under the said Morse's patent? and did he not hand over the same to the said lines for that purpose, and has not the said King done the same? and how much money have they, or either of them, received for the said messages? how much in each year, and when did they begin taking the same?

7. Would not the western telegraph business from Baltimore and Washington, through Pittsburgh and Wheeling, by means of established connection of lines under Morse's patent connecting

those points with others further west, have been sufficient to pay six per centum on the capital of complainants of one hundred thousand dollars, if the complainants could have commanded the whole thereof, so far as it passed between Washington and Baltimore and Pittsburgh and Wheeling? and could they not have commanded the whole but for the interference of the said defendants and the said Magnetic Telegraph Company?

8. What contract, engagement, or understanding has at any time been made by the said Penniman or King, or either of them, with any other persons or companies for bringing to Washington or Baltimore western telegraphic messages, as stated in this bill, or for sending the same from those cities west? and what deductions have been made by the said defendants, or either of them, or by the other persons and companies from the usual rates of charges for such messages?

9. Was not the accustomed mode of using the said telegraphic invention, to obtain from the patentees exclusive rights for certain points, as in the case of the said Penniman and the complainants? and on obtaining such exclusive rights between certain points, have not persons and companies obtaining the same relied for a large part of their profits on receiving and carrying telegraphic messages between those points from other persons having like rights at each extremity? and would any such exclusive right be of any value, if messages could be sent circuitously from those points or either of them.

May it please your honors to grant unto your orators the United States most gracious writ of subpœna, commanding the said George C. Penniman and John King, both of Baltimore city, by a certain day and under certain penalties to be therein named, to appear in your honorable court, and abide by and perform such decree as may be passed in the premises. And, as in duty bound, your orators will ever pray, &c.

CORNELIUS McLEAN,
GEORGE H. WILLIAMS,
Solic'rs for Complts.

NOTE.—The defendants, George C. Penniman and John King, are required to answer the interrogatories in the aforegoing bill, numbered one, two, three, four, five, six, seven, eight, and nine.

CORNELIUS McLEAN,
GEORGE H. WILLIAMS,
Solcrs. for Complts.

Sworn to by Jacob Carman before me this 15th day of April, 1857.

JOHN HANAN,
U. S. Com'r for Md.

Exhibit No. 1.

Know all men by these presents, that Samuel F. B. Morse, Alfred Vail, and Francis O. J. Smith, being the sole proprietors of the right to construct and use Morse's electro-magnetic telegraph, by him invented and patented, on the route between Baltimore, in the State of Maryland, and York and Harrisburg, in the State of Pennsylvania, for and in consideration of thirty dollars per mile by the route on which the said telegraph has been or may be constructed between the points or places aforesaid, the receipt whereof is hereby acknowledged, do, by their attorney, Amos Kendall, give, grant, sell, and convey unto George C. Penniman and his assigns the sole and exclusive right to construct and use, and to authorize others to construct and use, between the points or places aforesaid, the said telegraph with one or more wires, with the apparatus for working the same, and the improvements therein, which have been or may hereafter be invented by said Morse, or any of the grantors in this conveyance, as fully as said proprietors might or could do; the parties hereto of the first part covenanting hereby with the party of the second part not to grant to any person or persons the right to construct any other line of telegraph, under the patent aforesaid, within the said points, or to connect any two or more points within the limits aforesaid, either in a direct or indirect line:

To have and to hold the same to the said George C. Penniman and his assigns for and during the existence of Morse's patents already issued, and for and during the existence of any patent that may be hereafter granted in renewal or extension thereof, or for any improvements therein, free from all claim from us or any one claiming under us.

And the grantors, as far as they are concerned, have no objection to the transmission by this line of messages between Baltimore and Philadelphia whenever the line of the Magnetic Telegraph Company shall be interrupted by breaks or otherwise.

MARCH 7, 1848.

SAM'L F. B. MORSE, [SEAL.]
ALFRED VAIL, [SEAL.]
F. O. J. SMITH, [SEAL.]

By their attorney,
AMOS KENDALL.

Witnesses—
B. B. FRENCH,
HENRY J. ROGERS.

Received and recorded March 7, 1848.

430. Ex'd. C. F. S.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy of the record of the assignment of Morse, Vail, and Smith to Geo. C. Penniman, received and recorded May seventh, eighteen hundred and forty-eight.

In testimony whereof, I, Thomas Ewbank, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-second day of May, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fourth.

[SEAL]

THOS. EWBANK.

Exhibit No. 2.

This indenture, made this 30th day of April, in the year eighteen hundred and forty-nine, between Amos Kendall, as attorney in fact for Samuel F. B. Morse and Alfred Vail, of the first part, and the Western Telegraph Company, of the second part:

Whereas there were heretofore granted by the United States to the said Samuel F. B. Morse letters-patent for the Magnetic telegraph, now generally known and used as Morse's telegraph; and whereas the said Samuel F. B. Morse subsequently assigned portions of his interest in the said letters-patent to Alfred Vail and Leonard D. Gale; and whereas the said Morse, Gale, and Vail subsequently, by letters of attorney, recorded among the transfers of patent rights in the records of the Patent Office at Washington, on the twentieth day of October, in the year eighteen hundred and forty-seven, in liber N. J., pages 161 and 163, constituted and appointed the said Amos Kendall their true and lawful attorney, for them and in their behalf to make agreements and contracts for the sale of rights under the said letters-patent, with full authority to convey the same by all proper and binding instruments in the law, and the said Gale having since resold and reconveyed his interest in said letters-patent to the said Samuel F. B. Morse; and whereas the said Western Telegraph Company are desirous to obtain in due form the privileges of said letters-patent for lines of telegraph belonging to them between Baltimore and Wheeling, with a branch therefrom to Washington city, and a branch from Brownsville to the city of Pittsburg:

Now this indenture witnesseth that the said Amos Kendall, agent as aforesaid, for and in consideration of the sum of thirty-six thousand two hundred dollars paid to him in the stock certificates of the said Western Telegraph Company, hath, as far as he possesses legal authority by virtue of the power of attorney aforesaid or otherwise, granted, assigned, and conveyed to the said Western Telegraph Company the full and exclusive right to use the inven-

tion of said Morse, secured by letters-patent as aforesaid on the said lines from Baltimore to Wheeling, with branches to Washington and Pittsburgh respectively, for and during the rest, residue, and remainder of the time yet to come and unexpired in the said letters-patent, with the benefit of any extensions and renewals thereof, with all improvements and auxiliaries thereto which may at any time hereafter be made by the said patentee; it being understood that the right hereby granted is to be for one wire only, and that the said Company shall not use the said patent right on a second or more wires without the assent of the patentees first had and obtained.

In testimony whereof, the said Amos Kendall, as agent as aforesaid, hath hereunto set his hand and seal on the day and year first above written.

(Signed) AMOS KENDALL, [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) WILLIAM LINTON,
(Signed) GEO. WOOD.

UNITED STATES PATENT OFFICE.

Received 3d day of May, and recorded this 7th day of May, 1849, in liber VI., page 440, of transfers of patent rights.

[SEAL] In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

EDMUND BURKE,
Com'r of Patents.

Ex'd. W. H. S.

Exhibit No. 3.

Know all men by these presents, that I, Francis J. Smith, of the city of Portland, State of Maine, for a valuable consideration heretofore paid, the receipt whereof I do hereby acknowledge, and in consideration of a former deed of conveyance by me executed of the premises, which deed is alleged to be mislaid or lost, do hereby give, bargain, sell, and convey unto the Western Telegraph Company, a corporation existing under the laws of Maryland, all my right, title, and interest in and to the right and privilege of the exclusive use of the invention of the electro-magnetic telegraph, secured and described in and by several letters-patent heretofore issued under the laws of the United States to Samuel F. B. Morse, such exclusive use and privilege, as herein conveyed, being confined and limited to the route of said Western Telegraph Company's existing lines from Baltimore, in the State of Maryland, to Wheeling, in the State of Virginia, and in branches to Washington and Pittsburgh cities; the said right herein conveyed, and so

limited by said territorial termini, being one-fourth part of said invention and letters-patent, and of all improvements that have been or shall be made thereto by said Morse, as secured or that may be secured by him by new letters-patent, or extension or renewal of existing ones, to the full extent said Smith has heretofore been, or of right ought to be, vested therewith, within said termini, together with all rights, privileges and uses, by connecting with other lines of telegraph pertaining to the routes aforesaid, reserving, however, all rights and claims against said Morse and Alfred Vail, and Amos Kendall, as agent of said Morse and Vail, for reason of any damages occasioned by them or either of them in, by, and from the prior conveyance of three-quarter parts of said invention and letters-patent on said routes.

In testimony whereof, I have hereunto set my hand and affixed my seal on this twenty-seventh day of March, at said Portland, A. D. 1857.

(Signed) FRANCIS O. J. SMITH.

Witnesses—
IRA CROOKER,
WM. H. BAXTER.

Received and recorded 31st March, 1857.

Order.

THE WESTERN TELEGRAPH COMPANY vs. GEORGE C. PENNIMAN and JOHN KING. } In the circuit court of the United States for the Maryland district.

Ordered this 15th day of April, A. D. 1857, that the application for an injunction in this case, stand for hearing on the 18th day of May next, provided a copy of this order be served on the said George C. Penniman and John King on or before the first day of May next.

WILLIAM F. GILES.

Whereupon the writ of the United States of America of subpœna was issued out of the circuit court here, directed to the said George C. Penniman and John King, in the words and of the tenor following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To George C. Penniman and John King, citizens of Maryland, greeting:

[SEAL] You are hereby commanded that, all excuses and delays set aside, you and each of you be and appear before the

circuit court of the United States for the fourth circuit in and for the Maryland district, on the first Monday in May next, to answer unto the bill of complaint of the Western Telegraph Company, a corporation incorporated by the laws of Maryland, Virginia, and Pennsylvania, in the said court exhibited against you; hereof you are not to fail, as you will answer the contrary at your peril.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-six.

Issued 15th April, 1857.

THO. SPICER,
Ck. Circt. Ct.

Marshal's return.

"Summoned May 1, 1857."

J. W. WATKINS, *U. S. Marshal.*

Afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the Western Telegraph Company filed in the circuit court here an affidavit of service of notice on the defendants, in the words and of the tenor following, to wit:

Affidavit of service of notice.

THE WESTERN TELEGRAPH COMPANY vs. GEORGE C. PENNIMAN and JOHN KING. } In the circuit court of the United States for the Maryland district.

Ordered this 15th day of April, 1857, that the application for an injunction in this case stand for hearing on the 18th day of May next, provided a copy of this order be served on the said George C. Penniman and John King on or before the first day of May next.

WILLIAM F. GILES.

True copy. THO. SPICER, *Clk.*

UNITED STATES OF AMERICA,
District of Maryland, ss:

On this 20th day of April, 1857, before the undersigned, a commissioner of the circuit court of the United States for the fourth circuit in and for the district of Maryland, personally appeared William Barrett, and made oath on the holy evangely of Almighty God that he did, on the 18th day of April, 1857, serve a copy of the within order on George C. Penniman and John King, and also left a copy of the within order with them.

JOHN HANAN, *U. S. Com'r for Md.*

Afterwards, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the defendants by their solicitor filed in the circuit court here an order in the words following, to wit:

Order.

THE WESTERN TELEGRAPH COMPANY vs. GEORGE C. PENNIMAN and JOHN KING. } In the circuit court of the United States.

In the above case, the clerk will enter a general demurrer to the bill of complainants, and submit the cause for final hearing.

WM. H. TRAVERS,
For King and Penniman.

General demurrer.

THE WESTERN TELEGRAPH COMPANY v. GEORGE C. PENNIMAN and JOHN KING.

And the said George C. Penniman and John King, by William H. Travers, their solicitor, come and defend the wrong and injury, when, &c., and say, that the said bill of complaint, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said Western Telegraph Company to have or maintain its aforesaid action thereof against them, the said George C. Penniman and John King, and that they, the said George C. Penniman and John King, are not bound by the law of the land to answer the same, and this they are ready to verify; wherefore, for want of a sufficient bill of complaint in this behalf, the said George C. Penniman and John King pray judgment, and that the said Western Telegraph Company may be barred from having or maintaining its aforesaid action thereof against them, &c.

WM. H. TRAVERS,
Solicr. for Defendants.

Joinder in demurrer.

THE WESTERN TELEGRAPH COMPANY vs. GEORGE C. PENNIMAN and JOHN KING.

And the said Western Telegraph Company says that the said bill of complaint and the matters therein contained, in manner and

form as the same are above stated and set forth, are sufficient in law for it, the said Western Telegraph Company, to have and maintain its aforesaid action thereof against them, the said George C. Penniman and John King; and the said Western Telegraph Company is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said George C. Penniman and John King have not answered the said bill of complaint, nor hitherto in any manner denied the same, the said Western Telegraph Company prays judgment, &c.

McLEAN & WILLIAMS,
Solcrs. for Complt.

On the same day the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here the following submission, to wit:

Submission.

THE WESTERN TELEGRAPH COMPANY
vs.
GEORGE C. PENNIMAN and JOHN KING.

This case is submitted upon the bill, exhibits, and demurrer.

McLEAN & WILLIAMS,
For Complt.
WM. H. TRAVERS,
For Penniman and King.

On the same day the court here made and passed the following decree, to wit:

Decree.

THE WESTERN TELEGRAPH COMPANY
v.
GEORGE C. PENNIMAN and JOHN KING. } In equity.

This cause being submitted for final hearing on the bill and demurrer, and the same having been read and considered, it is thereupon, this 18th day of May, A. D. 1857, by the authority of this court, adjudged, ordered, and decreed, that the bill filed in this cause be and the same is hereby dismissed with costs.

WILLIAM F. GILES.

From which said decree so as aforesaid passed, the said Western Telegraph Company, by its solicitors, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; and to it, it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

Appeal Bond.

Know all men by these presents, that we, the Western Telegraph Company, Jacob Carman, and Cornelius H. McLean are held and firmly bound unto George C. Penniman and John King in the just and full sum of five hundred dollars, lawful money of the United States, to be paid unto the said George C. Penniman and John King, their heirs, executors, administrators, or assigns, to which payment well and truly to be made and done we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas heretofore, to wit, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the Western Telegraph Company filed in the circuit court of the United States for the fourth circuit in and for the Maryland district, its bill of complaint against the said George C. Penniman and John King:

And whereas at the April term, one thousand eight hundred and fifty-seven, of the said circuit court, by the decree of the same court, the said bill of complaint was dismissed with costs:

From which said decree so as aforesaid passed, the said Western Telegraph Company prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next:

Now the condition of the above obligation is such, that if the said Western Telegraph Company shall well and truly prosecute with effect its said appeal, and pay unto the said George C. Penniman and John King, their heirs, executors, administrators, or assigns, their costs and charges decreed to be paid unto them by the said circuit court, and also all such damages, costs, and charges as may be awarded unto them by the said Supreme Court, in case the said Western Telegraph Company shall fail to make good its said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

THE WESTERN TELEGRAPH COMPANY,
By JACOB CARMAN, *President*, [SEAL.]
JACOB CARMAN, [SEAL.]
CORNELIUS McLEAN, [SEAL.]

Signed, sealed, and delivered in presence of—
HENRY AISQUITH.